

Public Chapter 300

SENATE BILL NO. 430

By Fowler

Substituted for: House Bill No. 435

By Fowlkes

AN ACT To amend Tennessee Code Annotated, Title 35, relative to charitable beneficiaries and to enact the Tennessee Charitable Beneficiaries Act of 1997.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 35, is amended by adding the following new Chapter 13:

Section 35-13-101. The title of this act is, and may be cited as the "Tennessee Charitable Beneficiaries Act of 1997".

Section 35-13-102.

(a) This act declares that the public policy of Tennessee, as declared in its cases and statutes, favors gifts to charity that improve the general welfare through acts of philanthropy.

(b) As used in this act, unless the context otherwise requires:

(1) "Attorney general" means the Attorney General and Reporter for the State of Tennessee or the attorney general's designee;

(2) "Charitable beneficiary" means the United States, any state that is part of the United States, or any political subdivision of a state, the District of Columbia, any corporation, trust, fraternal society or other organization described in Sections 170(b)(1)(A), 170(c), 2055(a) and 2522(a) of the Internal Revenue Code that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or any church, synagogue, other religious organization, or any other organization, entity or association to which a gift would be deductible under Sections 170(b)(1)(A), 170(c), 2055(a) and 2522(a) of the Internal Revenue Code;

(3) "Charitable gift" means any gift clearly intended for charitable purposes;

(4) "Charitable purposes" means any purposes generally considered charitable at common law, or for any charitable purpose under any section of Tennessee Code Annotated, or for any purpose described in Sections 170(b)(1)(A), 170(c), 2055(a) and 2522(a) of the Internal Revenue Code. A reference to the applicable section or sections of Tennessee Code Annotated or the Internal Revenue Code sufficiently describes the charitable purposes of the gift;

(5) "Court" means the chancery court or other court exercising equity jurisdiction or a probate court of record;

(6) "Discretionary charitable gift" means a charitable gift that has indefinite beneficiaries, objects, purposes or subjects;

(7) "Donor" means the person making the lifetime or testamentary charitable gift;

(8) "Gift instrument" means a will, deed, grant, conveyance, trust agreement, memorandum, writing or other governing document that creates the charitable gift;

(9) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended; and

(10) "Tax-exempt" means that the organization, trust or beneficiary referred to is one that is described in Section 501(c)(3) of the Internal Revenue Code.

The words "humane", "beneficial", "beneficent", "worthy", "philanthropic", "humanitarian" or their derivatives or similar language in the gift instrument shall be presumed to be synonyms for "charitable" as used in this act, unless expressly indicated not to be charitable by the context in which they are used.

Section 35-13-103. A gift instrument that specifies the charitable beneficiaries, objects, purposes or subjects of the charitable gift controls the disposition or administration of the charitable gift, except as provided in Sections 35-13-106 and 35-13-107 of this act.

Section 35-13-104. No discretionary charitable gift shall be deemed invalid for indefiniteness. A discretionary charitable gift is not invalid because the donor authorizes or directs a personal representative, trustee or other third-party to choose the particular purposes or beneficiaries of the charitable gift, or to establish a trust or charitable corporation or other legal entity to implement the discretionary charitable gift.

Section 35-13-105. When the donor makes a discretionary charitable gift the following provisions apply:

(a) The person to whom discretion is given shall choose the charitable beneficiaries and charitable purposes within a reasonable time after having accepted the duty to select the beneficiaries or purposes of the discretionary charitable gift.

(b) If a donor makes a testamentary discretionary charitable gift not in trust and does not expressly designate the person to select the charitable beneficiaries or the charitable purposes, the personal representative of the donor's estate shall select the beneficiaries or the charitable purposes, or both, of the gift.

(c) If a donor makes a testamentary discretionary charitable gift in trust and does not expressly designate the person to select the charitable beneficiaries or the charitable purposes, the trustee shall select the charitable beneficiaries or the charitable purposes, or both, of the gift and, if appropriate, shall establish a trust or charitable corporation or other legal entity to implement the discretionary charitable gift.

(d) If the court receives notice that the person having the discretion is not ready, willing or able to perform the selection duties within a reasonable time or to establish the trust or other organization, the court shall select the person to exercise the discretion. If the discretionary gift is in trust, the court may exercise the power granted under Tennessee Code Annotated, Section 35-1-101.

Section 35-13-106. If a charitable gift is or becomes illegal, impossible or impracticable to enforce and if the donor manifested a general intent to devote the gift to charity, the court, on application of any trustee, or any interested person, or the attorney general, has jurisdiction to order the disposition or administration of the charitable gift as nearly as possible to fulfill the general charitable intention of the donor.

Section 35-13-107. If:

(a) A gift made to a trust is to take effect at a date later than the date of the gift instrument; and

(b) When the gift instrument is executed, the gift to the trust would qualify for a charitable deduction under the Internal Revenue Code if the gift were then effective; and

(c) The trust, or beneficiary of the trust, loses its tax-exempt status before the gift takes effect, the donor shall be presumed to have intended that the trust should be tax-exempt when the gift was to take effect, unless the donor clearly indicated in the gift instrument that the designated beneficiary should receive the gift even if the gift is not eligible for the charitable deduction. The court has jurisdiction to reform the trust by selecting another tax-exempt beneficiary, or to select another tax-exempt trust, and to select one (1) or more charitable purposes of the gift.

Section 35-13-108. No charitable gift shall fail for remoteness of vesting or for any violation of the rule against perpetuities.

Section 35-13-109. No trust to which a charitable gift or a discretionary charitable gift is or has been made shall fail for lack of a trustee. If there is no trustee, the title to any trust property intended for a charitable purpose shall vest in the clerk of the court that has jurisdiction and venue of the trust as determined under Section 35-13-110 until the court either appoints a trustee or orders distribution of the gift.

Section 35-13-110. (a) In all court actions directly affecting the amount, administration or disposition of a charitable gift or a discretionary charitable gift, the court may require that the attorney general be made a party to represent the charitable beneficiaries, potential charitable beneficiaries and all citizens of the State of Tennessee in all legal matters pertaining to the amount, administration and disposition of a charitable gift or discretionary charitable gift. The attorney general may sue and be sued, and, insofar as the suit against the attorney general is against the state, the state expressly consents to be sued. The attorney general may designate a district attorney general to prosecute or defend any court action.

(b) It is unlawful to settle any litigation concerning the validity of a charitable gift or discretionary charitable gift without first obtaining the approval of the court. The court shall approve a settlement only after determining that the interest of the people of the State of Tennessee, as true beneficiaries of any charitable gift, has been served.

Section 35-13-111. (a) If the gift instrument is a will and the estate is in administration, or if the gift under a will is not in trust, the venue of any court action is in the county in which the donor's will was or is being administered.

(b) If the gift instrument is an inter-vivos trust or a testamentary trust under a fully administered will, venue of any court action shall be in any county in which a trustee resides, or is located if not an individual, or in which a majority of the beneficiaries, or potential beneficiaries, reside or are located.

(c) If neither subsection (a) or (b) apply, venue is in Davidson County, Tennessee, in a court of competent jurisdiction; provided, however, the court may transfer the court action to a more convenient forum.

(d) With the consent of the court in which an action is pending, the parties may waive the venue provisions of subsections (a), (b) and (c) of this section.

Section 35-13-112. If the Tennessee Department of Revenue makes a written determination that the operation of a charitable trust violates Tennessee Code Annotated, Section 35-9-101 or if the Internal Revenue Service makes such a written determination with respect to the corresponding provisions of the Internal Revenue Code, and provides such written determination to the trustee, the trustee shall furnish a copy of the determination to the attorney general, and any other person may notify the attorney general of the determination. The attorney general may take any action that is deemed necessary to protect the interest of the people of the State of Tennessee.

Section 35-13-113. The provisions of this act are deemed cumulative to any equitable doctrine or remedy or statute having for its object the same or similar purposes of this act.

Section 35-13-114. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid

provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 2. This act shall take effect upon becoming a law as to all estates or trusts under administration or other entities administering a charitable gift or discretionary charitable gift, regardless of the date of the gift instrument or when administration began, the public welfare requiring it.